

CONFIDENTIALITY AGREEMENT

Our Ref: _____

Date Received: _____

(For FDRC's Official Use Only)

(Adapted from the Law Society's Sample Confidentiality Agreement)

In consideration of my being permitted to attend / give advice or opinion for the Mediation between _____ (Party A) and _____ (Party B), I agree to be personally bound by the confidentiality provisions (Clauses 11-16) of the *Agreement to Mediate* signed by the Parties on _____ (Date) as if I was a Party to the Mediation and undertake to the Parties and the Mediator that I will not disclose or use any information relating to the Mediation nor act as a witness in any subsequent proceedings.

Signature: _____ Date: _____

Name and Capacity (in print): _____

*Clauses 11-16 of the *Agreement to Mediate* provide as follows:-

"11. Any information disclosed to a Mediator in private is to be treated as confidential by the Mediator unless the Party making the disclosure states otherwise.

12. (a) The Parties and the Mediator agree to send a copy of this Agreement and the Mediated Settlement Agreement in the form set out in Annex VIII of the Terms of Reference (if any) to the FDRC. The Parties and the Mediator further agree that the Mediator shall file a Mediation Certificate in the form set out in Annex IX of the Terms of Reference referred to in Clauses 23 and 25 with the FDRC.

(b) Subject to Clause 12(a) and save as shall be required under any written law, regulation or an order of court, or as necessary to implement and enforce any settlement agreement, all persons involved in the Mediation shall keep confidential and not disclose or divulge (whether expressly or impliedly) to any third party: –

- (i) *the matters that transpired in the course of the Mediation;*
 - (ii) *any views expressed, or suggestions or proposals for settlement made by any Party for the resolution of the dispute in the course of the Mediation;*
 - (iii) *any views expressed by the Mediators;*
 - (iv) *all materials made available and communication made during the Mediation; and/or*
 - (v) *all materials, information, correspondence (including emails), issues/matters discussed, proposals and counterproposals produced for or arising in relation to the Mediation including but not limited to any Mediated Settlement Agreement (and the substance and/or terms thereof) except as directly necessary to implement and enforce any such settlement agreement.*
- (c) *Save as shall be required under any written law, regulations or an order of court, all materials made available, documents or other information produced for or arising in relation to the Mediation shall be privileged and shall not be admissible as evidence or discoverable in any proceedings connected with the Eligible Dispute, unless such documents would have in any event been admissible or discoverable in such proceedings.*
- (d) *The Parties shall not call the Mediator or the FDRC (or any of its employee, officer or representative) as a witness, consultant, mediator, arbitrator or expert in any subsequent proceedings relating to the Eligible Dispute.*
- (e) *The Parties' obligation of confidentiality is not affected by, and would continue with full force and effect after the conclusion of the Mediation.*
- (f) *Where a Party is a corporate entity, it shall ensure that all its officers, representatives and/or agents comply with Clause 12.*
- (g) *The fact that this Mediation has occurred, is continuing, or has concluded shall not be considered confidential.*

13. *Where a Party privately discloses to the Mediator any information in confidence before, during or after the Mediation, the Mediator will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.*
14. *The Parties must not take any verbatim recording or notes of the Mediation.*
15. *The Parties acknowledge that, by entering into Mediation according to the terms of this Agreement, they agree and accept that information shall be used by the FDRC for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of the Parties.*
16. *The Parties further agree that the FDRC shall have the right to make observations, including the right to appoint observer(s) to attend and/or observe any Mediation conducted under the Rules. The Parties and the Mediator shall be notified in writing of any such observation. Observer(s) shall comply with Clauses 11-15 as if he is a Party or Mediator to this Agreement and sign the Confidentiality Agreement set out in Annex VII of the Terms of Reference.”*